

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

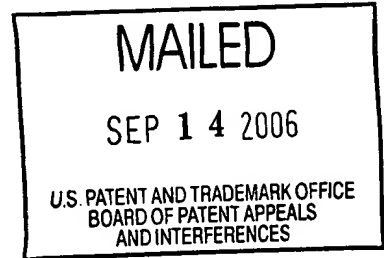
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte MARTIN H. GRAHAM

Appeal No. 2006-2122
Application No. 09/221,291

ON BRIEF



Before HAIRSTON, BARRY, and HOMERE, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 19 through 25.

The disclosed invention relates to a method of encoding data bits in the period of time between the lagging end of a first biphasic pulse and the leading end of a second biphasic pulse. The lagging end of the first biphasic pulse and the leading end of the second biphasic pulse are of the same polarity.

Claim 19 is illustrative of the claimed invention, and it reads as follows:

19. A method for encoding data bits for transmission comprising:

generating a first biphasic pulse having a first portion of a first polarity followed by a second portion of a second polarity;

waiting a period of time following the second portion of the first biphasic pulse during which period of time no amplitude dependent data

bits are encoding, the duration of the period of time being selected to represent a plurality of data bits; and

generating a second biphasic pulse following the period of time, the second biphasic pulse having a third portion of the second polarity followed by a fourth portion of the first polarity.

The references relied on by the examiner are:

Vanderpool et al. (Vanderpool)	5,654,978	Aug. 5, 1997
Pernyeszi	5,969,547	Oct. 19, 1999 (filed Oct. 24, 1997)
Gord et al. (Gord)	5,999,848	Dec. 7, 1999 (filed Sept. 12, 1997)

Claims 19 through 22, 24 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gord in view of Vanderpool.

Claim 23 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Gord in view of Vanderpool and Pernyeszi.

Reference is made to the briefs and the answer for the respective positions of the appellant and the examiner.

OPINION

We have carefully considered the entire record before us, and we will reverse the obviousness rejections of claims 19 through 25.

Gord describes a method of encoding input data bits with biphasic pulses per se (Figures 6 and 8). Although Gord shows a biphasic pulse (i.e., input data bit 1) with a lagging end that has the same polarity as the leading end of the next biphasic pulse (i.e., input data bit 0), the period of time between the biphasic pulses is not used for encoding purposes.

Vanderpool recognizes (column 1, lines 10 through 17) that the time delay between two successive pulses may be used to encode data. Vanderpool shows a time delay between two biphasic pulses, but the polarity of the lagging end of the first biphasic pulse is not the same as the polarity of the leading end of the second biphasic pulse (Figure 4).

Appellant argues (reply brief, page 2) that “[m]erely taking two consecutive pulses from one patent and combining it with another without some justification for this combination is inconsistent with an obvious[ness] rejection.” The only justification for the proposed combination of teachings is appellant’s disclosed and claimed invention, and such teachings are not available to the examiner in an obviousness determination. “It is impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious. In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) (citing In re Gorman, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). Thus, the obviousness rejection of claims 19 through 22, 24 and 25 is reversed because “[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.” In re Fine, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988).

The obviousness rejection of claim 23 is reversed because the teachings of Pernyeszi fail to cure the noted shortcomings in the teachings of Gord and Vanderpool.

DECISION

The decision of the examiner rejecting claims 19 through 25 under 35
U.S.C. § 103(a) is reversed.

REVERSED


KENNETH W. HAIRSTON
Administrative Patent Judge


LANCE LEONARD BARRY
Administrative Patent Judge

) BOARD OF PATENT

) APPEALS AND

) INTERFERENCES


JEAN R. HOMERE
Administrative Patent Judge

KH/gw

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